the depositary, whose lien in the principal case in fact exceeded the sum collected.

BILLS AND NOTES — CHECKS — NEGLIGENCE OF DRAWER: NEGLIGENT USE OF PROTECTOGRAPH. — A bank check for three dollars, otherwise properly drawn, was negligently stamped with a protectograph, "Not over $500." The payee raised the check to three hundred and sixty dollars and indorsed it to a *bonâ fide* purchaser, who now sues the drawer to recover the face value of the check. *Held*, that he can recover. *Second National Bank of Vincennes* v. *Campbell*, Ct. App., Hamilton County, Ohio (not yet reported).

If a check or other negotiable instrument is drawn in such a way as to suggest and facilitate the making of alterations which cannot be detected on inspection, a *bonâ fide* purchaser of the altered instrument may recover the full face value. *Garrard* v. *Haddan*, 67 Pa. St. 82; *Harvey* v. *Smith*, 55 Ill. 224; see *Young* v. *Grote*, 4 Bing. 253. *Contra*, *Knoxville National Bank* v. *Clark*, 51 Ia. 264; *Colonial Bank of Australasia* v. *Marshall*, [1906] A. C. 559. In the United States the authority to the contrary limits recovery to cases where the relation of banker and customer exists. See *Greenfield Savings Bank* v. *Stowell*, 123 Mass. 196, 201; 2 DANIEL, NEGOTIABLE INSTRUMENTS, 6 ed., § 1405. But a protectograph stamp is not an essential of a properly drawn check. It is in the nature of the marginal figures, which are not an integral part of the instrument. *Smith* v. *Smith*, 1 R. I. 398; *Garrard* v. *Lewis*, 10 Q. B. D. 30. See 1 DANIEL, NEGOTIABLE INSTRUMENTS, 6 ed., § 86. The case is thus not to be judged as if the bank was guilty of negligence in omitting to stamp the draft, "Not over $5." If the drawer had left the perfectly drawn instrument unstamped, he clearly would not have been liable. *Dana* v. *Underwood*, 19 Pick. (Mass.) 99; *Smith* v. *Chester*, 1 T. R. 654. And yet the forger could then have forged the alteration with equal ease and added a protectograph stamp to confirm his forgery. The mere presence of the protectograph, furthermore, cannot be said to have facilitated the alterations, for it was still necessary for the forger himself to erase parts of the existing instrument. By drawing the check properly in all its essential elements, the drawer satisfied his duty to the purchaser; the mere fact that in taking an unrequired precaution to safeguard his own interests, he acted without due care in attaching the protectograph stamp, should not make him liable to a purchaser who placed an uninvited reliance upon the same safeguard. Accordingly the decision in the principal case must be deemed wrong.

BILLS AND NOTES — DEFENSES — RELEASE OF SECURITY BY PAYEE WITHOUT ASSENT OF SURETY CO-MAKER — NEGOTIABLE INSTRUMENTS LAW. — The defendants signed a note as surety co-makers. The principal co-maker gave the plaintiff payee a deed of trust on land as security. The plaintiff, with notice of the suretyship relationship and without the assent of the defendants, released this security. *Held*, that the plaintiff cannot recover. *Long* v. *Shafer*, 171 S. W. 690 (Mo. App.).

The court reaches this result on the ground that a payee cannot be a holder in due course, and that under Section 58 of the Negotiable Instruments Law the instrument is therefore "subject to the same defenses as if it were non-negotiable." At common law, of course, any binding extension of time or release of security by a holder with notice of the suretyship would give a defense to the surety co-maker. *German Savings Ass'n* v. *Helmrick*, 57 Mo. 100; *Cummings* v. *Little*, 45 Me. 183; see 59 U. OF PA. L. REV. 532; 1 BRANDT, SURETYSHIP, 3 ed., § 38. But under the Negotiable Instruments Law it has been held that Section 192, making an accommodation maker primarily liable, and Sections 119 and 120, specifying extension of time as a method of releasing a party secondarily liable and not mentioning it for one primarily liable,

have altered the law. *Union Trust Co.* v. *McGinty*, 212 Mass. 205, 98 N. E. 679; *Lane* v. *Hyder*, 163 Mo. App. 688, 147 S. W. 514; *Cowan* v. *Ramsey*, 140 Pac. 501 (Ariz.). See 28 HARV. L. REV. 102. Apparently only one other court has, like the principal case, relied on Section 58 to release the surety. *Fullerton Lumber Co.* v. *Snouffer*, 139 Ia. 176, 117 N. W. 50. To relieve the surety, however, on the ground that a payee cannot be a holder in due course is unfortunate. The weight of authority at common law and under the English and American statutes is to the contrary. *Watson* v. *Russell*, 3 B. & S. 34; *Lucas* v. *Owens*, 113 Ind. 521, 16 N. E. 196; *Lloyd's Bank, Ltd.* v. *Cooke*, [1907] 1 K. B. 794, 806; *Boston Steel & Iron Co.* v. *Steuer*, 183 Mass. 140, 66 N. E. 646. See 15 HARV. L. REV. 579; 16 *id.* 596. A better method of reaching the desired result would be to hold frankly that Sections 119 and 120 do not apply. *Cf. Farmer's Bank of Wickliffe* v. *Wickliffe*, 134 Ky. 627, 121 S. W. 498. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 2 ed., 117. Such a course would be particularly justifiable in this case, as a release of security, unlike an extension of time, is not specifically mentioned in Section 120. Probably the best solution, however, would be to eliminate two sections which so inadequately attempt to codify the law of suretyship and leave the situation as it was at common law. See 14 HARV. L. REV. 241, 254; 16 *id.* 255, 259; 59 U. OF PA. L. REV. 532, 542.

BONDS — NEGLIGENT REISSUE BY OBLIGOR UNDER FORGED INDORSEMENT: RIGHTS OF *BONÂ FIDE* PURCHASER. — Executors owned bonds transferable only by indorsement and surrender. A thief stole the bonds, and by forging the indorsement, secured a reissue from the obligor in the name of one of the executors. The thief then forged the signature of this executor, and sold the bonds to a *bonâ fide* purchaser, who secured new bonds from the obligor in his own name. The obligor was found to be negligent in not discovering the forgery when the bonds were presented for the first reissue, but not in reissuing bonds to the purchaser. *Held*, that the executors are entitled to the bonds; but that the obligor, because of his negligence, must reimburse the purchaser. *Chester County, etc. Co.* v. *Securities Co.*, 150 N. Y. Supp. 1010 (App. Div.).

The transfer of bonds or notes under a forged indorsement of course passes no title even to a *bonâ fide* purchaser. *Dana* v. *Underwood*, 19 Pick. (Mass.) 99; *Smith* v. *Chester*, 1 T. R. 654. Hence the executors were clearly entitled to recover the bonds in the principal case, as an altered form of the *res*. *Graves* v. *American Exchange Bank*, 17 N. Y. 205; *Hatton* v. *Holmes*, 97 Cal. 208, 31 Pac. 1131. Furthermore, the obligor may ordinarily recover a payment made to a holder under a forged indorsement. *Canal Bank* v. *Bank of Albany*, 1 Hill (N. Y.) 287; *United States* v. *National Park Bank*, 6 Fed. 852. See AMES, "Doctrine of Price *v.* Neal," 4 HARV. L. REV. 297, 307. *Cf. London & River Plate Bank* v. *Bank of Liverpool*, [1896] 1 Q. B. 7. *A fortiori*, the obligor in the principal case could not be held liable to the purchaser, in spite of the legal title given to the purchaser by the reissue, unless in some way estopped to deny the forgery of the indorsement. It is true that negligence in signing commercial paper under the belief that it is an instrument of a different nature, estops the signer from denying liability on the instrument. *Douglass* v. *Matting*, 29 Ia. 498; *Chapman* v. *Rose*, 56 N. Y. 137; *Winchell* v. *Crider*, 29 Oh. St. 480. By analogy, the negligent reissue of an instrument under a forged indorsement should estop the issuer from denying the title of a subsequent *bonâ fide* purchaser of the new instrument. But in the principal case, the payee's indorsement on the new instrument was also forged, and since there was no negligence in the second reissue, the purchaser cannot recover unless the negligence of the obligor in the first reissue estops him from asserting the subsequent forged indorsement. To utter commercial paper in an improper form